

**FILED**

February 11, 2005

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

Charles R. Fulbruge III  
Clerk

No. 04-40664

D.C. Docket No. 6:03-CV-318

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

MAR 10 2005

DAVID J. MALAND, CLERK

SHANIKWA JOHNSON

Plaintiff - Appellee

v.

MARK WATERS, Etc; ET AL

Defendants

MARK WATERS, Deputy Constable

Defendant - Appellant

BY  
DEPUTY

Appeal from the United States District Court for the  
Eastern District of Texas, Tyler.

Before JOLLY and DAVIS, Circuit Judges, and ENGELHARDT, District  
Judge\*.

**J U D G M E N T**

This cause was considered on the record on appeal and the  
briefs on file.

It is ordered and adjudged that the appeal is dismissed for  
lack of jurisdiction.

IT IS FURTHER ORDERED that defendant-appellant pay to  
plaintiff-appellee the costs on appeal to be taxed by the Clerk  
of this Court.

ISSUED AS MANDATE: MAR 07 2005

\*District Judge of the Eastern District of Louisiana,  
sitting by designation.

A true copy  
Test

Clerk, U. S. Court of Appeals, Fifth Circuit

By

*David J. Maland*  
Deputy

New Orleans, Louisiana MAR 07 2005

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**UNITED STATES COURT OF APPEALS  
For the Fifth Circuit**

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No. 04-40664

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SHANIKWA JOHNSON

Plaintiff - Appellee

VERSUS

MARK WATERS, Etc; ET AL

Defendants

MARK WATERS, Deputy Constable

Defendant - Appellant

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Appeal from the United States District Court  
For the Eastern District of Texas  
6:03-CV-318

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Before JOLLY and DAVIS, Circuit Judges, and ENGELHARDT\*, District Judge.

PER CURIAM:\*\*

In this appeal from denial of qualified immunity, we agree with the district court that questions of fact are presented as to whether the defendant Constable Waters used excessive force in

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\*District Judge of the Eastern District of Louisiana, sitting by designation.

\*\*Pursuant to 5<sup>TH</sup> CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

seizing the plaintiff. Because genuine issues of material fact are presented we have no jurisdiction to consider this appeal.

Appeal dismissed.